

REMARKS/ARGUMENTS

Reconsideration of the application is requested.

Claims 10-19 remain in the application and are subject to examination. No claims have been amended, added or canceled herein.

In "Claim Rejections – 35 USC § 103," item 2 on pages 2-5 of the above-identified Office Action, claims 10-19 have been rejected as being obvious over U.S.

Publication No. 2004/0266339 to Larsson et al. (hereinafter Larsson) in view of U.S. Publication No. 2006/0077942 to Panwar et al. (hereinafter Panwar) under 35 U.S.C. § 103(a).

The Panwar reference has a 35 U.S.C. § 102(e) date of October 7, 2004, the filing date of Provisional Application No. 60/616/773. This is the earliest date upon which the reference is available to be cited against pending applications.

Applicant respectfully believes that Panwar is not prior art with respect to the instant application. The instant application is a National Stage of copending International Application No. **PCT/EP2004/051788**, filed **August 13, 2004**. Pursuant to 35 U.S.C. § 363, the instant application has a U.S. filing date of **August 13, 2004**, because the instant application designated the United States. This date is nearly two months prior to Panwar's filing date. Accordingly, Panwar is unavailable as prior art.

**Note the wording of 35 U.S.C. § 363:**

**35 U.S.C. 363 International application designating the United States:  
Effect.**

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

Therefore, Applicant respectfully submits that the rejection in item 2 on pages 2-5 of the Office action under Section 103 is moot.

In view of the foregoing, the Examiner is requested to withdraw the rejection under 35 U.S.C. § 103 in the above-identified office action and issue a Notice of Allowance.

Please charge any fees that might be due with respect to Sections 1.16 and 1.17 to Deposit Account Number 12-1099 of Lerner Greenberg Sterner LLP.

Respectfully submitted,

/Laurence A. Greenberg/  
Laurence A. Greenberg  
Reg. No.: 29,308

LAG/lq

April 16, 2009

Lerner Greenberg Sterner LLP  
P.O. Box 2480  
Hollywood, Florida 33022-2480  
Tel.: (954) 925-1100  
Fax: (954) 925-1101